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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150211144-5509-02]

RIN 0648-BE89

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2015

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing management measures for the 2015 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for each fishing year. The intent of these measures is to constrain recreational catch to established limits and prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Effective *[insert date of publication in the **Federal Register**]*.

ADDRESSESS: Copies of the Supplemental Information Report and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst,

(978) 281-9218.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° 13.3' N. lat. (the approximate latitude of Cape Hatteras, North Carolina) northward to the U.S./Canada border. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

A proposed rule to implement the 2015 Federal recreational management measures (minimum fish size, season, and possession limit) for the summer flounder, scup, and black sea bass fisheries was published in the ***Federal Register*** on May 5, 2015 (80 FR 25656), with a 15-day comment period that ended on May 20, 2015. Additional

background and information on the process to develop the measures described is provided in the preamble to the proposed rule and is not repeated here.

2015 Recreational Management Measures

NMFS is implementing the following measures that would apply in the Federal waters of the EEZ. These measures apply to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits, regardless of where they fish, unless the state in which they land implements measures that are more restrictive. These measures are intended to achieve, but not exceed, the previously established recreational harvest limits for these fisheries (December 30, 2014; 79 FR 78311). More detail on these proposed measures is provided in the following sections.

Table 1—Summary of 2015 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures

	Minimum Size	Possession Limit	Season
Summer Flounder, through December 31, 2015	Conservation equivalency – specific management measures determined by state of landing (see Table 2)		
Summer Flounder, beginning January 1, 2016	18 inches (45.7 cm)	4 fish	May 1-September 30
Scup	9 inches (25.4 cm)	50 fish	January 1–December 31
Black Sea Bass	12.5 inches (31.8 cm)	15 fish	May 15-September 18, October 22-December 31

Summer Flounder Recreational Management Measures

This rule implements the Council and Commission recommendation to use conservation equivalency to manage the 2015 summer flounder recreational fishery. The 2015 recreational harvest limit for summer flounder is 7.38 million lb (3,347 mt). Final landings for 2014 were 7.39 million lb (3,354 mt), just above the recreational harvest limit for 2015.

Conservation equivalency, as established by Framework Adjustment 2 (July 29,

2011; 66 FR 36208), allows each state to establish its own recreational management measures to achieve its state harvest limit partitioned by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (July 26, 2006; 71 FR 42315) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Council and Board voted to maintain the conservation equivalency structure that was in place for fishing year 2014, as follows: (1) Massachusetts; (2) Rhode Island; (3) Connecticut, New York, and New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. All states within a region must implement identical measures (i.e., minimum size, possession limit, and season length). By implementing conservation equivalency, the Federal summer flounder regulations are suspended, and vessels are only subject to the measures for the state in which they land. This means that minimum fish sizes, possession limits, and fishing seasons developed and adopted by the five regions from Massachusetts to North Carolina replace the Federal waters measures for 2015.

The Commission notified the NMFS Greater Atlantic Regional Administrator by letter dated April 30, 2015, that the 2015 summer flounder recreational fishery management measures implemented by the states and regions described above have been reviewed by the Commission's Technical Committee and approved by the Commission's Summer Flounder Management Board. The correspondence indicates that the Commission-approved management measures are projected to restrict 2015 recreational

summer flounder coastwide landings consistent with the state-specific requirements established by the Technical Committee and Board through the Commission process.

Based on the recommendation of the Commission, we find that the recreational summer flounder fishing measures implemented for 2015 in state waters are, collectively, the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively. According to § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2015. The 2015 summer flounder management measures adopted by the individual states vary according to the state of landing, as specified in Table 2.

Table 2 - 2015 Commission-Approved Conservation Equivalent Recreational Management Measures for Summer Flounder

State	Minimum Size (inches)	Minimum Size (cm)	Possession Limit (number of fish)	Open Season
Massachusetts	16	40.6	5	May 22-September 30
Rhode Island	18	45.7	8	May 1-December 31
Connecticut*	18	45.7	5	May 17-September 21
New York	18	45.7	5	May 17-September 21
New Jersey*	18	45.7	5	May 23-September 26
Delaware	16	40.6	4	All Year
Maryland	16	40.6	4	All Year
Potomac River Fisheries Commission	16	40.6	4	All year
Virginia	16	40.6	4	All year
North Carolina	15	38.1	6	All Year

* Note: At 46 designated shore sites in Connecticut, anglers may keep 5 fish at 16 inches (40.6 cm), May 17-September 21. At 1 designated site in New Jersey, anglers may keep 2 fish at 16.0 inches (40.6 cm), May 23-September 26.

In addition, this action maintains the current default coastwide measures (18-inch (45.7-cm) minimum size, 4-fish possession limit, May 1-September 30 open fishing season), that become effective January 1, 2016, when conservation equivalency expires.

Scup Recreational Management Measures

NMFS is implementing the Council and Commission's recommended scup recreational management measures for 2015 in Federal waters. The measures for the 2015 scup recreational fishery are: 9-inch (22.9-cm) minimum fish size; 50-fish per person per trip possession limit; and an open season of January 1 through December 31.

The 2015 scup recreational harvest limit is 6.80 million lb (3,084 mt). Final 2014 scup recreational landings were 4.12 million lb (1,870 mt). The increase in the possession limit from 30 to 50 fish is intended to promote an increase in recreational scup fishing in order to more fully achieve, but not exceed, the recreational harvest limit.

Black Sea Bass Recreational Management Measures

This final rule implements the Council and Commission's recommended recreational management measures to constrain landings for black sea bass in 2015: A 12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and open seasons of May 15-September 21 and October 22-December 31. The 2015 black sea bass recreational harvest limit is 2.33 million lb (1,056 mt). The final 2014 landings were 3.65 million lb (1,656 mt). During development of these and the state measures, projected landings for 2014 were 3.45 million lb (1,565 mt), which requires a 33-percent reduction in landings relative to the 2015 recreational harvest limit.

Recreational black sea bass catch occurs primarily in state waters in the states of New Jersey through Massachusetts (i.e., the northern region). Since 2011, the

management measures in the northern region have been more restrictive than in Federal waters. The northern states, through the Commission process, have implemented 2015 measures to achieve the 33-percent reduction in landings from each state that was projected to be needed when this action was under development. This reduction, in combination with the Council's recommendation of maintaining the status quo measures in Federal waters, are intended to achieve, but not exceed, the recreational harvest limit and recreational annual catch limit in 2015. The southern region states (Delaware through Cape Hatteras, North Carolina) have implemented state waters measures that are equivalent to the Federal measures. The states of Maine and New Hampshire have implemented recreational black sea bass measures for the first time in response to the stock being more commonly found in these states' waters.

In 2012, recreational black sea bass catch exceeded the annual catch limit of 2.52 million lb (1,143 mt) by 129 percent. In 2013, recreational black sea bass catch exceeded the annual catch limit of 2.9 million lb (1,315 mt) by 5 percent. Because the average catch for these two years exceeds the average annual catch limit from the same timeframe, as described in the regulations, an accountability measure is applicable to the 2015 fishery. An accountability measure was implemented for the 2014 fishing year because of the 2012 overage. The 2015 measures are functionally the same as those implemented last year to comply with the accountability measure (12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and 201-day fishing season). Continuing these regulations preserves the accountability measure that was applied last year; as such, no further accountability measures are necessary for 2015.

Additional Regulatory Change

This rule also clarifies that the regulations for summer flounder, scup, and black sea bass possession limits are per person, per trip. While it is clear in the FMP and subsequent amendments and framework adjustments that the possession limits are intended to apply for the entirety of a fishing trip, regardless of the length of that trip, the regulations were less specific. This action corrects that oversight.

Comments and Responses

Three comments were received on the proposed rule. These comments were not directly related to the 2015 recreational management measures as proposed, but raised more general issues. No changes to the 2015 recreational management measures are being made as a result.

Comment 1: The first commenter expressed concern that reduced black sea bass fishing would result in increased pressure on other stocks, such as red hake, bluefish, and winter flounder, and noted a marked increase in fishing on red hake when other recreational fisheries have restrictive measures. The commenter advised leaving the fishery open during the summer months.

Response: The Federal black sea bass fishery will be open during the summer months, but some states may implement more restrictive seasons in order to achieve the reduction necessary, described above. NMFS has no authority over the states' measures and they are not the subject of this rule. In addition, the other species noted by the commenter are all federally managed species with annual catch limits and accountability measures designed to ensure catch stays within scientifically-based levels.

Comment 2: The second commenter was not specific to which measures he was referring, but noted that recreational measures should not be made more restrictive and

that more restrictive measures should be placed on the commercial fishery.

Response: This rulemaking is specific to the recreational fisheries for summer flounder, scup, and black sea bass only. For all three species managed under the Summer Flounder, Scup, and Black Sea Bass FMP, the commercial and recreational sectors have separate annual catch limits. The amount of landings allocated to each sector is specified in the FMP. This allocation structure is intended to ensure that neither sector is held accountable for catch overages in the other sector. The commercial fisheries are regulated with seasonal, gear, permit, and landings restrictions. These combinations of measures, both in Federal and state waters, are designed to achieve, but not exceed, the commercial coastwide landings quotas. The commercial accountability measures require a pound-for-pound payback of any quota or annual catch limit overages. In recent years, small overages of the commercial quota or commercial annual catch limit have been accounted for by reducing the following year's quota equal to the amount of the overage, as needed. Further restrictions on the commercial fishery are not warranted at this time. Should the commercial catch need to be reduced for any of these species, those changes would be implemented in a commercial sector-specific rulemaking.

Comment 3: The commenter noted that limits on the number and size of fish caught recreationally were important to the long-term sustainability of the fisheries.

Response: NMFS agrees and is implementing these measures specifically to ensure that the scientifically-based recreational harvest limits are not exceeded.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that the rule implementing the 2015 summer flounder, scup, and black sea bass recreational

management measures is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness under the provisions of section 553(d) of the Administrative Procedure Act because a delay in its effectiveness would not serve any legitimate purpose, while unfairly prejudicing federally permitted charter/party vessels. This action will increase the possession limit for the recreational scup fishery in Federal waters and allow federally permitted charter/party vessels to be subject to the new summer flounder measures in their respective states. Because some states' summer flounder fisheries are already open or will open during the 30-day period following publication of this rule, federally permitted charter/party vessels would be restricted to the existing summer flounder coastwide regulations (18-inch (45.7-cm) minimum size and a 4-fish per person possession limit) until the Federal regulations are effective. This would unnecessarily disadvantage federally permitted vessels, which would be subject to the more restrictive measures while state-licensed vessels could be engaged in fishing activities under this year's management measures. If this final rule were delayed for 30 days, the fishery would likely forego some amount of landings and revenues during the delay period.

While these restrictions would be alleviated after this rule becomes effective, fishermen may be not able to recoup the lost economic opportunity of foregone trips that

would result from delaying the effectiveness of this action. Finally, requiring a 30-day delay before the final rule becomes effective would not provide any benefit to the regulated parties. Unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the published management measures for each relevant species of fish while the charter/party operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay and to implement this rule upon publication in the **Federal Register**.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared. There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 15, 2015

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.106, paragraphs (a) and (c) are revised to read as follows:

§ 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and

crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

* * * * *

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

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3. In § 648.107, paragraph (a) introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures implemented by the states of Maine through North Carolina for 2015 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

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4. In § 648.128, paragraphs (a) and (c) are revised to read as follows:

§ 648.128 Scup possession restrictions.

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 50 scup in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

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(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

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5. In § 648.145, paragraphs (a) and (c) are revised to read as follows:

§ 648.145 Black sea bass possession limit.

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 15 black sea bass in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium

permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 15 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

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(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

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6. Section 648.146 is revised to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through September 21, and October 22 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

